

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 595 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

HASUBHAI VELJIBHAI RATHOD

Versus

RAMJIBHAI VELJIBHAI RATHOD

Appearance:

MR SURESH M SHAH for Petitioner
Respondents served

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 01/08/97

ORAL JUDGEMENT

1. The respondent No.1 Ramjibhai Valjibhai Rathod applied for Letters of Administration of the will allegedly executed by Valjibhai Rathod. It appears that on 3rd of July, 1993, an ex parte order was granted in his favour granting Letters of Administration of the will. Thereupon, respondents No. 3 to 5 who are also the sons of the deceased, applied for setting aside the ex parte order granted for Letters of Administration of

the will on 3rd of July, 1993. For that purpose, they filed Misc. Civil Application No. 176 of 1993, wherein they also applied for ad interim relief against operation of the order passed by the court on 3rd of July, 1993 which relief was granted. Since, ad interim relief was granted by the court, the respondents No. 3 to 5 issued a public notice in the newspaper on 27th of August, 1993 informing the public at large that ad interim relief is granted to them and that they had applied for setting aside the ex parte grant of Letters of Administration. On issuance of such public notice, the present petitioner came to know that Letters of administration were already granted in favour of the respondent No.1 ex parte on 3rd of July, 1993 and, therefore, on 30th August, 1993, the present petitioner also applied for setting aside the ex parte grant of Letters of Administration by filing Misc. Civil Application No. 182 of 1993. In preferring such application, obviously there was delay and, therefore, an application was made for condonation of delay. By Exhibit-7, application was made to grant the ad interim relief for stay of the ex parte order passed on 3rd of July, 1993. It appears that the Civil Revision Application No. 1550 of 1993 which was filed against refusal to condone delay in making MCA No. 182 of 1993 was allowed His Lordship B.C. Patel, J. on 1st of April, 1995, but, this Civil Revision Application which was directed against refusal to grant stay of the order was unfortunately got separated and that is how the matter has come before this Court.

2. Mr. Mehul Shah submitted that in Civil Revision Application No. 1550 of 1993, the order of maintenance of status quo was passed, which operated all through out and now this present Civil Revision Application is required to be decided which is against the order passed below Exhibit-7 for grant of stay. Though this Civil Revision Application was ordered to be heard along with CRA No. 1550 of 1993, it was got separated. In my opinion, when the said CRA is allowed and maintenance of status quo has operated all through out, it would be just and proper to grant the stay of the ex parte grant of Letters of Administration dated 3rd of July, 1993 which would subserve the purpose of justice and equity.

3. In the result, the order passed by the court below Exhibit 7 dated 26th November, 1993 is quashed and set aside and order of maintenance of status quo is restored during the final disposal of the application for grant of Letters of Administration of the will of the deceased. Rule is accordingly made absolute. There shall be no order as to costs.

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